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19
20 UNITED STATES DISTRICT COURT
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22 SOUTHERN DISTRICT OF CALIFORNIA
23
24 SAN DIEGO DIVISION

25 VEDANTI LICENSING LIMITED,
26 LLC,

27 Plaintiff,

28 vs.

GOOGLE LLC,

Defendant.

CASE NO. 3:20-CV-01344-BEN-WVG

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS PURSUANT TO FED. R.
CIV. P. 12(B)(6) AND MOTION TO
STRIKE PURSUANT TO FED. R.
CIV. P. 12(F)**

Date: October 13, 2020

Time: 10:30 a.m.

Judge: Hon. Roger T. Benitez
Courtroom 5A

1 Defendant Google LLC (“Google”) respectfully requests that the Court
 2 consider certain documents identified below in connection with Google’s Motion to
 3 Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and Motion to Strike Pursuant to Fed.
 4 R. Civ. P. 12(f) (“Motion”) because: (1) the Court may take judicial notice of the
 5 following documents and certain terms contained therein pursuant to Federal Rule
 6 of Evidence 201 and related authority; and (2) certain documents were referenced
 7 or relied upon in the Complaint (Dkt. 1) as identified below. These documents are
 8 attached as Exhibits to the Declaration of Robert W. Unikel in Support of
 9 Defendant’s Motion (“Unikel Declaration”).

10 Exhibit	11 Description	12 Basis
13 Ex. A	14 Search results for any copyrights held 15 by Vedanti in the Online Copyright 16 Public Records Catalog maintained by 17 the U.S. Copyright Office	18 FRE 201 and because 19 referenced or relied upon 20 in Complaint
21 Ex. B	22 U.S. Patent Office’s record of 23 assignment history for U.S. Patent No. 24 7,974,339 (“339 Patent”)	25 FRE 201 and because 26 referenced or relied upon 27 in Complaint
28 Ex. C	29 LLC Registration for Vedanti 30 Licensing Limited LLC from the 31 California Secretary of State	32 FRE 201
33 Ex. D	34 IPR2016-00212, Final Written 35 Decision (May 17, 2017)	36 FRE 201 and because 37 referenced or relied upon 38 in Complaint
39 Ex. G	40 IPR2016-00212, Patent Owner Vedanti 41 Systems Limited’s Mandatory Notices 42 (Dec. 9, 2015)	43 FRE 201
44 Ex. H	45 IPR2016-00212, Patent Owner’s 46 Updated Mandatory Notice (Aug. 11, 47 2016)	48 FRE 201
49 Ex. I	50 IPR2016-00212, Patent Owner’s Third 51 Updated Mandatory Notice (Jan. 12, 52 2017)	53 FRE 201

1 Federal Rule of Evidence 201 authorizes this Court to take judicial notice of
 2 facts “not subject to reasonable dispute” that “can be accurately and readily
 3 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.
 4 Evid. 201(b). The Rule mandates that judicial notice be taken “if a party requests it
 5 and the court is supplied with the necessary information,” *id.* at 201(c), and
 6 authorizes judicial notice “at any stage of the proceeding,” *id.* at 201(d). *See Mir v.*
 7 *Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (“In addition to the
 8 complaint, it is proper for the district court to ‘take judicial notice of matters of
 9 public record outside the pleadings’ and consider them for purposes of the motion
 10 to dismiss.”) (citation omitted).

11 It is well settled that records and reports from government agencies are the
 12 proper subject of judicial notice. *See, e.g., Barron v. Reich*, 13 F.3d 1370, 1377 (9th
 13 Cir. 1994) (judicial notice may be taken of “[r]ecords and reports of administrative
 14 bodies”); *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980, 998 (N.D. Cal. 2010) (“The
 15 Court may properly take judicial notice of the documents appearing on a
 16 governmental website.”).

17 Specifically, it is appropriate to take judicial notice of the PTAB’s Final
 18 Written Decision (Ex. D) and other PTAB filings (Exs. G–I). *See Papai v. Harbor*
Tug & Barge Co., 67 F.3d 203, 207 n.5 (9th Cir. 1995), *rev’d on other grounds*,
 19 520 U.S. 548 (1997) (“Judicial notice is properly taken of orders and decisions
 20 made by other courts or administrative agencies.”); *PersonalWeb Techs. LLC v.*
Google LLC, No. 5:13-cv-01317-EJD, 2020 WL 520618, at *6 n.4 (N.D. Cal. Jan.
 21 31, 2020) (“The IPR materials cited by Defendants and Plaintiff are subject to
 22 judicial notice.”) (*appeal filed*).

23 The ’339 Patent’s assignment history (Ex. B), as reflected by the PTO
 24 records, is also eligible for judicial notice. “Because the USPTO documents are
 25 public records ‘capable of accurate and ready determination by resort to sources
 26 whose accuracy cannot be questioned,’ judicial notice is proper.” *Seoul Laser*

1 *Dieboard Sys. Co. v. Serviform, S.r.l.*, 957 F. Supp. 2d 1189, 1194 n. 2 (S.D. Cal.
 2 2013); *Certified Nutraceuticals, Inc. v. Avicenna Nutraceutical, LLC*, No. 3:16-cv-
 3 02810, 2018 WL 4385368, at *1 (S.D. Cal. Sept. 14, 2018) (“The Court takes
 4 judicial notice of the ’319 Patent’s assignment history, which is publicly available
 5 on the United States Patent and Trademarks Office’s (‘USPTO’s) website”).

6 Further, the Court may properly take judicial notice of the LLC Registration
 7 for Vedanti Licensing Limited LLC from the California Secretary of State. Courts
 8 in this district routinely do so. *See, e.g., Kearny Mesa Real Estate Holdings, LLC v.*
 9 *KTA Constr., Inc.*, No. 17-cv-207, 2017 WL 3537753, at *3 (S.D. Cal. Aug. 16,
 10 2017) (taking judicial notice of a Certificate of Registration issued by the California
 11 Secretary of State); *Phillips v. Wells Fargo Bank, N.A.*, No. 09-cv-1486, 2009 WL
 12 3756698, at *3 (S.D. Cal. Nov. 6, 2009) (taking judicial notice of a copy of the
 13 California Secretary of State’s office records regarding the status of a foreign
 14 limited liability company as an active and registered foreign entity).

15 Google respectfully requests that the Court also take judicial notice of the
 16 online records of the Copyright Office (Ex. A). “[U]nder Fed. R. Evid. 201, a court
 17 may take judicial notice of ‘matters of public record,’ including copyright
 18 registrations. *LePatner C3, LLC v. Thomas Jefferson Sch. of Law*, No. 14-cv-758,
 19 2014 WL 2436295, at *3 (S.D. Cal. May 30, 2014) (citation omitted); *ATPAC, Inc.*
 20 *v. Aptitude Sols., Inc.*, No. CIV. 2:10294 WBS KJM, 2010 WL 1779901, at *3
 21 (E.D. Cal. Apr. 29, 2010) (taking judicial notice of a copy of the Copyright Office’s
 22 webpage “because the record is generated by an official government website such
 23 that its accuracy is not reasonably in dispute”).

24 The Court may also take judicial notice of the USPTO assignment records,
 25 the Copyright Office records, and the Final Written Decision of the PTAB because
 26 “they are integral to the plaintiff’s claims and their authenticity is not disputed.”
 27 *simplehuman, LLC v. iTouchless Housewares & Prods., Inc.*, No. 19-cv-02701,
 28 2019 WL 5963245, at *2 (N.D. Cal. Nov. 13, 2019) (*citing Parrino v. FHP, Inc.*,

1 146 F.3d 699, 705–06 (9th Cir. 1998), *superseded by statute on other grounds as*
2 *stated in Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir.
3 2006)). The USPTO assignment records (Ex. B) and Copyright Office records (Ex.
4 A) are not attached to Plaintiff’s Complaint, but the Complaint bases its alleged
5 standing to bring this action on Plaintiff’s claim that it “is the owner by assignment
6 of all rights, title, and interests in the ‘339 Patent and the Vedanti Source Code and
7 is entitled to sue for past and future infringement thereof.” Dkt. 1, ¶ 23. Thus, the
8 assignment records and copyright registration records are an integral part of
9 Plaintiff’s claims. The Final Written Decision (Ex. D) is referenced in the
10 Complaint and is integral to Vedanti’s claims (*i.e.*, which patent claims Vedanti is
11 eligible to assert). In its Complaint, Vedanti states “the PTAB determined on May
12 17, 2017 that claims 1, 6, 7, 9, 10, 12, and 13 of the ’339 Patent were unpatentable
13 under 35 U.S.C. 103 over the combination of the Spriggs and Golin references . . .
14 the remaining claims of the ’339 Patent—claims 2, 3, 4, 5, 8, and 11—are still valid
15 and enforceable today.” Dkt. 1, ¶¶ 35–36. The Court may properly take judicial
16 notice of these records because they are officially published on and publicly
17 accessible on the USPTO and Copyright Office websites. Thus, they are
18 ascertainable, verifiable, and their accuracy cannot be reasonably questioned. Fed.
19 R. Evid. 201(b)(2).

20 Therefore, Google requests that the Court take judicial notice of Exhibits A–
21 D and G–I of the Unikel Declaration.

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1 DATED: September 8, 2020

Respectfully submitted,

2 By: /s/ Robert W. Unikel

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